

(2008) 05 UK CK 0003
In the Uttarakhand High Court

The New India Assurance Company Ltd.	APPELLANT
Vs	
Diwan Singh Rawat and Another	RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Employees Compensation Act, 1923 — Section 3
Motor Vehicles Act, 1988 — Section 166, 167, 173

Citation : (2008) 05 UK CK 0003

Hon'ble Judges : B.C.Kandpal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.C. Kandpal, J.—This appeal, u/s 173 of the Motor Vehicles Act, 1988 has been preferred against the judgment and award dated 10-2-2006, passed by Motor Accident Claims Tribunal/Addl. District Judge/II F.T.C. Nainital, in MACT Case No. 141 of 2004.

2. Brief facts of the case are that the claimant Diwan Singh Rawat was employed as driver on Truck No. U.P. 02C-7798. On 23-4-2004, when the said Truck reached near Bari Mazar, P.S. Kichha, the front tyre of the truck gone burst and it went deep into roadside Khud. Before overturning, the Truck also hit with the tree by which the driver/applicant sustained grievous injuries. One of his legs was crushed. He was operated several times in Futela's Hospital, Rudrapur and at least one lac rupees were spent on his medical treatment and care. The claimant filed claim petition for compensation.

3. The Opposite Party No. 1, New India Assurance Company filed written statement and denied its liability for the reason that no information was given to the insurer after the accident. The Insurance Company also denied the allegations made in the petition.

4. The Opposite Party No. 2, owner of the offending Truck also filed his written statement and admitted the accident but alleged that the vehicle was insured

with New India Assurance Company for comprehensive liability and the liability to pay the compensation is upon the insurer.

5. The Tribunal framed relevant issues, on the basis of pleadings of parties. Thereafter, claimant adduced evidence in support of his claim. The opposite party filed insurance policy. The Tribunal after hearing learned Counsel for the parties and perusing the evidence on record, awarded a sum of Rs. 1,05,000/- as compensation against the New India Assurance Company along with interest @ 7% per annum from the date of filing the petition till the date of actual payment.

6. Feeling aggrieved the New India Assurance Company has filed this appeal before this Court.

7. Heard learned Counsel for the parties and perused the evidence.

8. Learned Counsel for the insurance company has submitted that the Tribunal has failed to consider that the liability of the Insurance company is only to the extent as per Workmen's Compensation Act, as the premium paid by the insured to the Company is only to cover the risk of employed driver as per Workmen's Compensation Act, therefore, the Tribunal has committed an error of law in passing the award, under the provision of Motor Vehicles Act.

9. The learned Counsel for the other side has opposed the above contention and submitted that the Insurance Company has obtained premium under the head "compulsory P.A. for owner/driver". The policy was comprehensive policy and the claimant has chosen the forum to file his claim under the provision of Motor Vehicles Act, and the Tribunal had jurisdiction to decide the claim petition, therefore, the insurance company cannot refuse its liability to pay the compensation.

10. After having considered the rival contentions of learned Counsel for the parties, I do not find any force in this appeal. The Tribunal has discussed the point in detail and has rightly recorded the finding that compensation can be claimed for the injury sustained or death occurred in a motor accident, by moving an application u/s 166 of the Motor Vehicles Act and Section 3 of the Workmen's Compensation Act also lays down if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provision of Workmen's Compensation Act. Further Section 167 of the M.V. Act, gives an option either to file petition under the provisions of Motor Vehicle Act or Workmen's Compensation Act, but not under both. In the instant case the applicant has chosen the forum to file his claim under the provision of Motor Vehicles Act, and it cannot be said that the Tribunal has got no jurisdiction to decide the claim petition. I do not find any error of law in the finding recorded by the tribunal on the point of jurisdiction. The offending vehicle was insured with the New India Assurance Company for comprehensive liability and premium was paid under the head "compulsory P.A. of owner/driver", and the driver was having valid driving license, therefore, the insurer has rightly been held liable to

pay compensation.

11. So far as the quantum of compensation is concerned, the claimant has filed medical bills for a sum of Rs. 45,436/- and the Tribunal has awarded a sum of Rs. 40,000/- towards medical treatment. The claimant also filed a certificate about the expenses on future medical treatment and the Tribunal has awarded a sum of Rs. 15,000/- under this head. Rs. 25,000/- were awarded for pain and suffering. The Tribunal also awarded a sum of Rs. 15,000/- towards loss of salary due to the injuries suffered by him. The claimant remained admitted in the Hospital for about 50 days, iron rod was inserted in his left leg and he will be treated in future also, therefore, the above amounts towards pain and suffering, loss of salary, and future expenses, are just and proper. Further, Rs. 5,000/- and Rs. 5,000/- were also awarded towards expenses for nutritious and special diet and for conveyance charges respectively. The total compensation, therefore, comes to Rs. 40,000/- + Rs. 15,000/- + Rs. 25,000/- + Rs. 15,000/- + Rs. 5,000/- + Rs. 5,000/- = Rs. 1,05,000/-. I do not find any error in awarding the compensation under afforesaid heads by the Tribunal. The impugned award does not require any interference by this Court. The Tribunal also awarded interest @ 7% per annum from the date of filing the petition till the date of actual payment, which shall remain intact.

12. For the reasons recorded above, the appeal lacks merit and is liable to be dismissed.

13. Accordingly, the appeal is dismissed. The impugned judgment and award dated 10-2-2006 is confirmed.

14. The statutory amount of compensation deposited in this Court at the time of admission of appeal, be remitted to the Tribunal concerned.